

# On Addressing the Practice of Child Marriage through Universal Human Rights: Making a Case from Ethiopian Perspectives

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**Abstract:** Ethiopia has adopted many international human rights instruments including those dealing with the rights of children. Beside this, the country's constitution has incorporated the rights of child in its provisions. The constitution also establishes that international human rights instruments adopted by the government are part and parcel of the law of the land in such a way that they should be enforced just as other domestic laws and policies. Moreover, it is stipulated under the constitution that its human rights provisions are to be interpreted in line with international human rights standards including the UDHR.

Despite the constitutional provisions and adoption of several international human rights instruments, the practice of child marriage is yet highly prevalent in Ethiopia. And this has to do with the culture of the society, the weak normative and institutional framework for the enforcement of human rights of children, and the government's failure to take the practice of child marriage as a serious human rights issue.

This paper argues that the practice of child marriage should be considered as an expression of "communal cultural relativism", in resistance to the universality of human rights, and a serious human rights problem that need to be addressed through a human rights-based approach by recognizing that the principle of the universality of human rights doesn't allow the persistence of harmful cultural practices under the guise of societal culture and values, and that the government has the obligation to change and transform cultures and traditions that are affront to the rights and dignities of children.

**Keywords:** Human Rights, Ethiopian Constitution, Child Marriage, Universality of Human Rights, Cultural Relativism, Government Obligation, Human Rights-based Approach.

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## 1. INTRODUCTION

Marriage is the basic foundation of family and society. It is an institution protected by international human rights law. However, child marriage is a harmful traditional practice proscribed under international human rights law. Similar to many traditional societies around the world, the practice of child marriage is an age old practice in Ethiopia, deeply rooted in the culture and tradition of the society. Due to this, child marriage is a hidden crisis in Ethiopia as the victims are the overwhelmingly young children whose concerns are not properly addressed. This harmful practice has not been taken as serious human rights issue by the government<sup>1</sup>. Compared to its adverse effect on the rights, life and development of the child, the practice hasn't got proper attention from the stakeholders<sup>2</sup>. Having these in mind, this paper would assess the practice of child marriage vis-a-vis human rights of children and state obligations in relation thereto. This would help identify the failures and the challenges, and the ways out in addressing the problem of child marriage in Ethiopia through international human rights framework.

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<sup>1</sup>Alula Pankhurst and Yisak Tafere(2013), Harmful Traditional Practices and Child Protection: Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia, p.18

<sup>2</sup>Ibid.

In doing so, the thesis starts by establishing child marriage as an issue of human rights in general and in Ethiopia in particular. Establishing this framework would require consideration of the issue of cultural relativism and universality of human rights debate. And the debate on the universality of human rights, on the one hand, and cultural relativism, on the other, would be important to place the practice of child marriage in context. This is because, child marriage is a practice that is affront to the rights and well-being of children but condoned by the society as its deeply-rooted cultural practice and tradition.

Child marriage usually takes place in the private sphere but it is still important to take the responsibility of states into account as governments have the obligation to respect, protect and fulfill human rights of children as provided under human rights laws. It is, therefore, important to note that addressing the practice of child marriage, as a human rights issue, would bring the cultural relativism and universality of human rights debate from the perspective of the obligations of the community, the state and the rights of children.

The debate between cultural relativism and universality of human rights has political, philosophical and cultural (anthropological) features. For the purpose of this paper, however, I would focus on the debate from anthropological perspectives as it is much related with child marriage which itself is a cultural practice.

After establishing child marriage as a human rights issue, I would discuss the notion of universality of human rights and cultural relativism. Then I would go on showing why the argument for universality of human rights is the argument that should be embraced from theoretical and practical view points.

In most cases, the argument for cultural relativism and universality of human rights has been traditionally linked with the protection and enforcement of civil and political rights that are related with political power and systems of governance. This is because, on the one hand, much of the focus of the western world, the traditional proponent of human rights, has been on the protection of this cluster of rights. On the other hand, as these rights are threats to their political systems and power, the elites of the third world have been vocal in alleging cultural variations as a defense for their failures to protect those rights. From these, we can see that the cultural relativism argument has mainly been limited in scope, and most of human rights values have been sidelined as they are politically less important to the parties concerned. This is partly related with the politicization of human rights.

Taking all the above in to account, I would then discuss how the practice of child marriage can be set in the cultural relativism and universality of human rights nexus. This is important as it would help establish the role human rights mechanisms play in addressing the practice of child marriage in Ethiopia. The background to Ethiopian human rights regime and the status of international human rights under the Ethiopian legal system will also be discussed. In this regard, the prevalence of the practice of child marriage, the causes and consequences there of would also be considered. Moreover, the normative and institutional frameworks to address the practice of child marriage in Ethiopia would be assessed in light of state obligations under international human rights laws and the prevailing problems of child marriage in the country. Following this, the practical and theoretical gaps thereof would be considered.

For the purpose of this paper, 'the normative framework' includes the constitution, subsidiary legislations, policies, strategies and procedures that have to do with the protection of the rights of children in one way or another. Similarly, the term 'institutional framework' is taken to include all government agencies and their mechanisms that, in one way or another, deal with the protection of the rights and well-being of children.

After assessing the normative and institutional frameworks, the paper would analyze the legal and practical challenges of tackling the practice of child marriage in Ethiopia. It would then go on exploring the significance of a human rights based approach in addressing the problem of child marriage in the country. And finally conclusions would be forwarded.

## 2. CHILD MARRIAGE, CULTURE AND HUMAN RIGHTS

### 2.1. Child Marriage as an Issue of Human Rights:

Child marriage is a type of marriage in which at least one of the parties is below the age of eighteen years<sup>3</sup>. Before dealing with the debate on cultural relativism and universality of human rights vis-à-vis child marriage, it is essential to establish the practice of child marriage as an issue of human rights violations. This is important to put the whole issues in context.

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<sup>3</sup>Convention on the Rights of the Child under art. 1 defines a child as every human being below the age of eighteen years

Child marriage as an issue of human rights violations can be seen from two perspectives. On the one hand, from the perspectives of the practice of child marriage per se, and on the other, from the consequences of child marriage on the human rights of children.

As at least one of the parties is under age, child marriage per se affects the right to free and full consent to enter marriage as recognized by human rights laws. This is because consent cannot be free and full when the individual involved is not sufficiently mature to make an informed decision about a life partner<sup>4</sup>. As there is no an element of free will and maturity in its undertaking, child marriage is a type of forced marriage with no legal effect<sup>5</sup>.

The right of an individual to choose a spouse and enter freely into marriage is central to dignity and equality as a human being. To exercise free and informed consent as provided by Article 16 of the CEDAW, a person needs to have the capacity to understand the meaning and responsibility of marriage and the right to exercise a choice as to whether or not to marry, whom and when to marry<sup>6</sup>. On account of these, in child marriage, the parties are deemed incapable of giving informed consent. Moreover, child marriages are set up by parents and children rarely meet or get to know their future spouse before the wedding, and are coerced into the marriage against their will<sup>7</sup>.

In addition to these, early marriage is linked to the violations of many other human rights of children. Child marriage prevents children from obtaining education, enjoying optimal health and ultimately choosing their own life partners. Child marriage exposes children to violence, divorce, abandonment, and poverty<sup>8</sup>. Child marriage is also a form of gender-based violence as girls are more exposed to child marriage than do boys and the impact thereof is more serious on girls than on boys, as they are more likely to experience sexual abuse, rape and post-marriage domestic violence as its consequence<sup>9</sup>.

All these show that harmful practices such as the likes of child marriage, whether based on tradition, culture or religion are violations of human rights. Allowing them to persist and remain lawful places states in breach of their international human rights obligations.

## 2.2. Universality of Human Rights:

As can be understood from the preambles of international human rights instruments, human rights are rights that are held by each individual because of their human nature. They are held by all individuals because they are born human. This basic human nature is constituted by our shared physical needs, social needs and moral potentiality and the idea of human rights assumes at the very least the existence of a human subject who is conscious and able to make and justify moral choices<sup>10</sup>.

Due to the existing challenges to the idea of universality of human rights, many arguments in its defense have been developed. And these arguments for the universality of human rights take many forms. One of this is the conceptual and substantive universality argument. According to this, human rights are rights that emanate from human nature and, as such, they are equal, inalienable and held universally by all human beings<sup>11</sup>. The historical or anthropological universality is another principle which holds that human rights are universal as most societies cross-culturally and historically manifest conceptions of human rights values<sup>12</sup>. This argument contends that no society or culture prior to the seventeenth century had a widely endorsed practice, or even vision, of equal and inalienable individual human rights and hence modern human rights are of no ethno-centric<sup>13</sup>.

The other form of Universality is the functional universality which asserts that human rights values, which were not there historically or anthropologically in ancient cultures, rather developed as a response to modernity and its pitfalls on different groups of people to relieve them from injustices which later led to the success of the human rights regimes<sup>14</sup>.

<sup>4</sup> Universal Declaration of Human Rights, Article 16 (2).

<sup>5</sup> Article 23 of the ICCPR, Article 16 (1) of CEDAW

<sup>6</sup> The CEDAW General Recommendation, 22, Paragraph 6.

<sup>7</sup> Rita Mutyaba (2011) Early Marriage: A Violation of Girls' Fundamental Human Rights in Africa, 19 Int'l J. Child. Rts. 339,p.10

<sup>8</sup> Ibid.

<sup>9</sup> Rita Mutyaba(2011), supranote 6, p.14

<sup>10</sup> Jack Donnelly (2007), the Relative Universality of Human Rights, 29 Hum. Rts. Q. 281, p.15

<sup>11</sup> Ibid.

<sup>12</sup> Id.p.20

<sup>13</sup> Id.p.23

<sup>14</sup> Id.p.22

This argument affirms that human rights ideas and practices arose not from any deep western cultural roots but from the social, economic, and political transformations of modernity<sup>15</sup>. Hence human rights values have relevance wherever those transformations have occurred, irrespective of the pre-existing culture of the place. And the spread of modern markets and states has globalized the same threats to human dignity initially experienced in Europe<sup>16</sup>. For this, human rights today remain the only proven effective means to assure human dignity in societies dominated by markets and states<sup>17</sup>.

All these defensible claims of universality are about the rights that we have as human beings. Whether everyone enjoys these rights is another issue. This is because human rights regime mainly relies on national implementation. And national practices, in most cases, would be filtered by moral, conceptual and socio-cultural interpretations. This is very much related with the doctrine of cultural relativism which is a challenge to the enforcement and protection of international human rights.

### 2.3. Cultural Relativism in Human Rights:

Cultural relativism is a theory which asserts that there are no mechanisms by which different cultures can be judged as all judgments would be ethnocentric. It is a doctrine that is strongly supported by notions of communal autonomy and self-determination and assumes that there is no any culture whose customs and beliefs dominate all others in a moral sense<sup>18</sup>. This doctrine implies that all cultures are morally equal and valid, and that there could be no judgments made of their comparisons.

The arguments for cultural relativism take different forms. Descriptive relativism asserts that different societies have different perceptions of rights and wrongs based on their cultural variations<sup>19</sup>. And, therefore, societies across cultures have different social practices and views about morality. For metaethical relativism, it is impossible to discover moral truth and hence there is no valid method for moral reasoning and evaluation<sup>20</sup>. Normative relativism, on the other hand, asserts that persons, depending on their cultural attachments, ought to do different things and have different rights<sup>21</sup>. Accordingly, individuals of different cultures have different rights and obligations. As there are no trans-cultural moral standards by which different cultures can be judged, and this theory is bound to accept all cultural practices without any value judgment.

Epistemological relativism, in its part, holds that all cultures are mutually incomprehensible and there is no such thing as objective truth or reason that transcends cultural variations<sup>22</sup>. According to this, human beings are shaped exclusively by their culture and, thus, there exists no unifying cross-cultural human characteristics<sup>23</sup>. It affirms that there would be no supra-cultural standards against which cultural practices of different societies may be evaluated for their validity.

Specifically in relation to human rights, the theory of cultural relativism in human rights holds that different societies, due to their own unique social and historical contexts, have different views on the concept of human rights. Accordingly, local cultural traditions properly determine the existence and scope of human rights enjoyed by individuals in a given society and there exists no supra-cultural standards against which human rights practices may be evaluated<sup>24</sup>. Thus, relativists claim that substantive human rights standards vary among different cultures, and what may be regarded as a human rights violation in one society may not be the case in another.

### 2.4. In Defense of Universality of Human Rights:

From the previous discussions, we have seen what is meant by universality of human rights and cultural relativism and their essence and features. Under this topic, I would evaluate cultural relativism and universality of human rights from different angles. I contend that human rights are universal and they supersede the argument of cultural relativism as the latter is an argument that is based on many flawed assumptions.

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<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

<sup>17</sup> Ibid.

<sup>18</sup>Rhoda E. Howard (1993), Cultural Absolutism and the Nostalgia for Community Rhoda E. Howard 15 Hum. Rts. Q. 315, p.22

<sup>19</sup>Ibid.

<sup>20</sup>Elizabeth M. Zechenter(1997) In the Name of Culture: Cultural Relativism and the Abuse of the Individual, Journal of Anthropological Research, Vol. 53, No. 3, p.16

<sup>21</sup>FERNANDO R. TES(1985), International Human Rights and Cultural Relativism 25 Va. J. Int'l L. 869, p.15

<sup>22</sup> Ibid.

<sup>23</sup>Ibid.

<sup>24</sup>Bonny Ibhawoh (2001), Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse, 19 Neth. Q. Hum. Rts. 43, p.23

One of the primary objections to cultural relativism is that it depends on a static conception of culture. It tends to take place at an abstract and highly generalized level where culture is flawedly conceptualized as a static, homogeneous and bounded entity<sup>25</sup>. All forms of cultural relativism fundamentally fail to recognize culture as an ongoing historic and institutional process where the existence of a given custom does not mean that the custom is either optimal, or consented to by a majority of its adherents<sup>26</sup>. Culture is far more effectively characterized as an on-going adaptation to a changing environment rather than as a static phenomenon. In a changing environment, cultural practices routinely outlive their usefulness, and cultural values change either through internal dialogue or through cross-cultural influences.

Relativists also hold that cultures should not be tinkered with, lest they should be damaged or destroyed<sup>27</sup>. They are concerned that changes, whether effected by internal factors or universal human rights laws, could lead to destruction of cultures, for if a part of a culture is modified or taken away, then the whole culture might collapse<sup>28</sup>. Consequently, relativists focus on justifications of traditional customs, forgetting that cultures have been continuously changing themselves throughout the history of human evolution<sup>29</sup>. They ignore the fact that there has been a wealth of archaeological and ethnographic data that confirm the basic evolutionary character of human culture<sup>30</sup>.

By emphasizing stability, cultural relativism disregards and minimizes the systemic aspects of women's subordination, which seems to be correlated with the socio-cultural level of development of a given society, rather than being some immutable characteristics of human life<sup>31</sup>. In a changing environment, cultural practices routinely outlive their usefulness, and cultural values change either through internal dialogue within the cultural group or through cross-cultural influences<sup>32</sup>. Any contact between cultures is likely to cause at least some modification in the customs of the contacting cultures or induce their interpretation<sup>33</sup>. It is this constant reinvention and modification of customs that allows cultures to survive and be viable over time<sup>34</sup>. However, cultural relativism, as applied to human rights, fails to grasp this basic nature of human culture by assuming it as a unitary and unique whole. Due to this, women and children born into stratified societies endure high levels of physical violence, child marriage, genital mutilation, rape, spousal abuse, restrictions on movement and female infanticide<sup>35</sup>.

Anthropological data also show that many societies engage in customs and practices that are either inefficient or inhumane or are maladaptive in that they endanger human health and life<sup>36</sup>. In fact, it is true that the persistence of a given custom does not necessarily mean that it is optimal or consented to by a majority of its adherents<sup>37</sup>. These show that beliefs and practices that are rather harmful to the society may persist over long periods of time.

On the other hand, the cognitive-epistemic relativism argument that cultures are mutually incomprehensible seems to ignore historical and anthropological facts. Through out history, cultures have been interacting and their interaction has some sort of mutual understanding which need not necessarily be optimal. Human beings have some form of mutual commensurability of their cognitive faculties that supersede cultural and linguistic diversity<sup>38</sup>. Due to contacts and exchange of values, cultures and traditions have been developed throughout history. And there has never been a culture that developed in isolation without borrowing from, or lending to, values from others. The cultural relativists also seem to

<sup>25</sup>Ibid.

<sup>26</sup>Bonny Ibhawoh (2001), Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse, 19 Neth. Q. Hum. Rts. 43,p.18

<sup>27</sup>Ibid.

<sup>28</sup>Elizabeth M. Zechenter(1997), In the Name of Culture: Cultural Relativism and the Abuse of the Individual, Journal of Anthropological Research, Vol. 53, No. 3,p.14

<sup>29</sup> Ibid.

<sup>30</sup>Ibid.

<sup>31</sup>Ibid.

<sup>32</sup>Bonny Ibhawoh (2001), Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse, 19 Neth. Q. Hum. Rts. 43,p.23

<sup>33</sup> Michael Goodhart(2003), Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalization, Human Rights Quarterly 25, p. 935

<sup>34</sup>Ann-Belinda S. Preis( 1996), Human Rights as Cultural Practice: An Anthropological Critique,Human Rights Quarterly, Vol. 18, No. 2 p. 295

<sup>35</sup> Bonny Ibhawoh(2001), supranote 42

<sup>36</sup>Ibid.

<sup>37</sup>Michael K. Addo (2010), Practice of United Nations Human Rights Treaty Bodies in the Reconciliation of Cultural Diversity with Universal Respect for Human Rights, 32 Hum. Rts. Q. 60, p.17

<sup>38</sup> Claudio Corradetti(2009), Relativism and Human Rights A Theory of Pluralistic Universalism (Springer Science+Business Media B.V.), P.5



deny the fact that the absence of the concept of human rights in certain cultures and contexts is not peculiar to non-western societies. Medieval Europe, like traditional African or Asian societies, had no inkling of human rights values in the modern sense<sup>39</sup>.

Moreover, from a practical point of view, relativism is unsustainable in the modern world. Even the most remote cultural groups have been substantially integrated into the global economy and are subject to ever growing external influences<sup>40</sup>. In many parts of the world, women themselves have taken the initiative at the grassroots level to fight harmful traditional practices<sup>41</sup>. Many non-western groups and individuals not only support and embrace the universal standards but also use them as a tool in their on-going internal cultural dialogues<sup>42</sup>. These developments disprove the relativists' argument that universal human rights are excessively western and thus not desired by non-western societies.

Cultural relativism has also been an instrument used by states to cover up their failures to live up to their commitments under international human rights law. Though this practice of invoking cultural relativism is more common in relation to civil and political rights, sometimes it also happens to other types of human rights. For example, the cultural argument has been exploited by state delegates appearing before the UN Committee on the Rights of the Child to cover up their failure to deal with internal practices<sup>43</sup>. This is an example of the instrumental use of the cultural relativism argument for political ends.

As indicated under the above discussions, the application of cultural relativism to international human rights is troubling because of its potential consequences. The abandonment of universalism in favor of cultural relativism would have profound implications for those brutalized in the name of culture or religion<sup>44</sup>. Cultural relativism would undermine the universalist foundations of modern international human rights laws and all meaningful dialogue about human rights abuses<sup>45</sup>. Instead, all sorts of culturally sanctioned violations of individuals would be legitimized, and individuals would be left unprotected against cultural and religious traditions.

The goal of universalism is to create a floor below which no society can stoop in the treatment of its citizens<sup>46</sup>. Conversely, universalism has never aspired to establish an upper ceiling of what the ideal or maximum level of human rights should be, leaving such improvements and enhancements to each individual state in accordance with its resources and abilities<sup>47</sup>. To argue that human rights are universal is not equivalent to saying that their understanding or interpretation is self-evident or immutable, or to denying the various cultural contexts in which human rights must be embedded<sup>48</sup>. Universalism does not preclude flexibility in the conceptualization, interpretation and application of human rights within and between different cultures<sup>49</sup>.

The universal human rights law represents an attempt to strike a proper balance between the rights of each individual culture to create its own moral and ethical norms and the needs of individuals to be protected against brutal customs and cultural practices<sup>50</sup>. International human rights norms offer a useful framework for resolving conflicts between women's rights and traditional customs that harm and dehumanize them<sup>51</sup>. Universal human rights standards act as limits on the excesses of culture and religion-based violences. They ensure that culture is not being used as an excuse to impair women's de jure and de facto rights<sup>52</sup>. Ultimately, the rights of individuals and groups must be balanced by evaluating the

<sup>39</sup>Bonny Ibhawoh (2001), Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse 19 Neth. Q. Hum. Rts. 43, p.26

<sup>40</sup>Ibid.

<sup>41</sup>Ibid.

<sup>42</sup>Elizabeth M. Zechenter(1997),In the Name of Culture: Cultural Relativism and the Abuse of the Individual, Journal of Anthropological Research, Vol. 53, No. 3,p.30,

<sup>43</sup>Sonia Harris-Short (2003), International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child, 25 Hum. Rts. Q. 130, p.21

<sup>44</sup>Ibid.

<sup>45</sup>Bonny Ibhawoh (2001), Cultural Relativism and Human Rights: Reconsidering the Africanist Discourse, 19 Neth. Q. Hum. Rts. 43, p.11

<sup>46</sup>Ibid.

<sup>47</sup>Fernando R. Tesan(1985), International Human Rights and Cultural Relativism, 25 Va. J. Int'l L. 869, p.66

<sup>48</sup>Ibid.

<sup>49</sup>Rhoda E. Howard (1993), Cultural Absolutism and the Nostalgia for Community, 15 Hum. Rts. Q. 315, p.22

<sup>50</sup>Ibid.

<sup>51</sup>Elizabeth M. Zechenter(Autumn, 1997), In the Name of Culture: Cultural Relativism and the Abuse of the Individual, Vol. 53, No. 3, p.22

<sup>52</sup>Ibid.

nature and significance of cultural practices, their effects on the weakest members of the society, the degree to which the conflicting rights interfere with each other, the cumulative effects of potential restrictions on either's rights, and the proportionality of the restriction<sup>53</sup>.

## 2.5. The Practice of Child Marriage in the Universalism-Cultural Relativism Debate:

Human rights are principally a claim by individuals against the state and the society. The family, the community and the state are responsible for the implementation and protection of human rights of individuals<sup>54</sup>.

The argument for cultural relativism in human rights may be advanced by political elites, groups, the community and society. The practice of child marriage, as advanced by communities and the society, is a cultural practice that has become a challenge to universal human rights enforcement<sup>55</sup>.

The issues of cultural relativism and universality of human rights vis-a-vs the practice of child marriage may emerge from different scenarios. It may come from the reaction of the society or the community to international human rights values. Though human rights obligations primarily lie upon the state, the society has also the obligation to protect human rights of its individual members. So when a society resists changes or refuses to condone human rights, it is possible to say that there is an issue of cultural relativism against universality of human rights values. This is what I would call 'communal cultural relativism'. The communal cultural relativism is commonly associated with being at forefront in resisting changes and realization of human rights by defending traditional practices affecting women and children including the practice of child marriage. And in many societies, as far as traditional practices are concerned, there exists a negative attitude towards children's rights and a strong resistance, even resentment, to being told that they must leave their old traditions behind<sup>56</sup>.

Harmful traditional practices are caused by deeply entrenched societal norms that compete with human rights values and relegate women and children to the lowest spot in the societal strata<sup>57</sup>. In this case there is a cultural interest of the society to condone the practice of the child marriage, on the one hand, and the rights of individual members of the society for the protection of their human rights, on the other. In this regard, consideration of culture by the society as static and unchangeable entity has been problematic for the protection of human rights of women and children all over the world<sup>58</sup>. Moreover, in many societies around the world, there is a view that the rights of the child are of western origin and every child has to live with in the norms of its society and under go all forms of traditional practices that the society adheres to<sup>59</sup>.

The rationale given most often for the denial of human rights to this half of the world's population is the preservation of the community, the religious and traditional authority structures set to interpret value systems and cultural norms<sup>60</sup>. These show that cultural relativism is being advanced by groups and the community to pursue their privilege and the age old practice of child marriage.

Therefore, when a community sticks to its harmful practices in contravention to universal human rights, we can say that there is a communal cultural relativism expressed in the form of refusal or resistance to abandon harmful traditional practices. In this regard, the practice of child marriage is a case in point.

Furthermore, the universality of human rights and cultural relativism debate may surface at the point of accession and enforcement of human rights laws. States may resist or refrain from accession to international human rights instruments. Even after ratification, they may allege differences in social and cultural contexts as a defense against external criticism. States may also become reluctant to deal with human rights issues as they were supposed to do. This is for example when

<sup>53</sup>Ibid.

<sup>54</sup>Sonia Harris-Short (2003), International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child, 25 Hum. Rts. Q. 130, p.22

<sup>55</sup>Elizabeth M. Zechenter(1997), In the Name of Culture: Cultural Relativism and the Abuse of the Individual, Journal of Anthropological Research, Vol. 53, No. 3, p.21

<sup>56</sup>Sonia Harris-Short(2003), supranote 70

<sup>57</sup> Jacqueline Mercier (2006), Eliminating Child Marriage in India: A Backdoor Approach to Alleviating Human Rights Violations, Boston College Third World Law Journal Volume 26, Issue 2, p.6

<sup>58</sup>Jessica Almqvist(2005), Human Rights, Culture, and the Rule of Law, Oxford and Portland, p.24

<sup>59</sup>Sonja Grover(2006), Children's Rights as Ground Zero in the Debate on the Universality of Human Rights: The Child Marriage Issue as a Case Example, 2 Original L. Rev. 72 Vol 2, No 2,p.22

<sup>60</sup>Elizabeth M. Zechenter(1997), In the Name of Culture: Cultural Relativism and the Abuse of the Individual, Journal of Anthropological Research, Vol. 53, No. 3, p.20

a state fails or shows negligence to deal with culturally sponsored human rights violations. These are what I would call the 'elitist cultural relativism' as they are advanced or used by state authorities to shun external scrutiny and criticisms.

The nature of the appeal to culture by a state, however, appears to take one particular dominant form. Culture is not being raised to challenge the basic legitimacy of international human rights norms. In other words, the state is not generally contending that the various articles of the Child Convention are not applicable to the particular cultural context of non-western states<sup>61</sup>. To the contrary, the state is keen to be seen to be embracing human rights as the best way forward and thus the argument focuses instead on the difficulties the state faces in implementing the norms of the convention against a background of entrenched cultural practices at the local level<sup>62</sup>. Some states indirectly raise a challenge to the universality of human rights on the grounds of culture alleging the difficulty of uprooting traditional practices from the grassroots level<sup>63</sup>. They have also been arguing for the respect of family values and cultural practices and traditions of their society in cases before international human rights bodies that monitor human rights in general and the rights of child in particular<sup>64</sup>. The concept of culture is used, in many occasions, to explain and justify the discrepancy existing between the theory and practice of human rights<sup>65</sup>. These kinds of cultural arguments are being deployed by state delegates appearing before the committee on the rights of the child and the CEDAW committee<sup>66</sup>. Hence it is possible to say that the argument for cultural relativism is practically helping governments as an excuse for their failures to live up to their obligations under international human rights laws.

Similar to many non-western societies, Ethiopia is a patriarchal society that keeps women and children at a subordinate position, using religion and culture as an excuse<sup>67</sup>. Traditions and cultures that are contrary to international human rights standard are widely embraced by the society<sup>68</sup>. And there is also community resistance and opposition against accepting human rights and shunning traditional practices affecting women and children<sup>69</sup>. Due to these, women and children, in Ethiopia, suffer from the adverse effects of traditional practices throughout their lifetime.

From the above discussions, we can understand that the practice of child marriage can be set in the cultural relativism and universality of human rights nexus. For this, the attitude of the community to the rights of children and women, and the associated customary practices, including child marriage, in relation thereto, the obligation of the community and the state at large vis-a-vis the human rights of children and women are the issues under consideration.

### 3. THE ETHIOPIAN HUMAN RIGHTS SYSTEM AND THE PRACTICE OF CHILD MARRIAGE

#### 3.1. The Ethiopian Human Rights System:

Following the overthrow of the communist regime, a new constitution was introduced in 1994 by the incumbent government of the Federal Democratic Republic of Ethiopia. This new constitution has brought a major shift in the human rights systems of the country. It has devoted a whole chapter on human rights and has recognized, among others, gender equality, protection of vulnerable groups, child rights, and economic, social and cultural rights<sup>70</sup>. Along with the ratification of many international human rights instruments, several policies and legislations have been introduced that deal with women, children and other vulnerable groups have been introduced.

The constitution has also established a framework about adoption and incorporation of international human rights treaties. Accordingly, article 9(4) of the Ethiopian Constitution renders all international human rights instruments ratified by Ethiopia as an integral part of the law of the land. Furthermore, Article 13(2) of the Constitution provides that the

<sup>61</sup>Sonia Harris-Short (2003), International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child, 25 Hum. Rts. Q. 130, p.25

<sup>62</sup>Biswajit Ghosh(201), Child Marriage, Society and The Law:A Study in a Rural Context in West Bengal, International Journal of Law, Policy and the Family 25(2), (2011), p.232

<sup>63</sup>Elizabeth M. Zechenter(1997), In the Name of Culture: Cultural Relativism and the Abuse of the Individual, Journal of Anthropological Research, Vol. 53, No. 3, p.20

<sup>64</sup>Sonia Harris-Short (2003), International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child, 25 Hum. Rts. Q. 130, p.29

<sup>65</sup>Jack Donnelly(1984), Cultural Relativism and Universal Human Rights, Human Rights Quarterly, Vol. 6, No. 4, p. 406

<sup>66</sup>Elizabeth M. Zechenter (1997), Supranote 70.

<sup>67</sup>Ibid.

<sup>68</sup>Ibid.

<sup>69</sup>Ibid.

<sup>70</sup>The constitution of the Federal Democratic Republic of Ethiopia, 1994



fundamental rights provided under the constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, and other international instruments ratified by Ethiopia.

### 3.2. Child Marriage in Ethiopia:

#### 3.2.1. The Prevalence of Child Marriage in Ethiopia:

In Ethiopia, marriage is among the most significant life events for both men and women, signalling the emergence to adulthood. It sets in motion a variety of other life changes, and is the beginning of building a new family. It is an institution protected by human rights laws.

Despite this, child marriage is not an institution sanctioned by law. It is rather a violation of international human rights laws. Child marriage condemns children to an existence devoid of education, health and a number of other human rights. Child marriage is reported to be most prevalent in the world's poorest countries where social and economic options for children are most limited<sup>71</sup>. It has very high incidence among third world societies and there is little evidence of its declining trends<sup>72</sup>.

In Ethiopia, child marriage takes different forms including a promissory marriage, whereby a verbal promise is made at infancy or even at birth by the parents to have their children get married<sup>73</sup>. Usually, elders from the prospective groom's family approach the father of the prospective bride to propose a marriage. If the union is acceptable, the families negotiate marital exchanges and set a wedding date<sup>74</sup>. In most cases, the child bride is taken to her in-laws immediately after the wedding to live with her husband who in most cases is a much older man<sup>75</sup>.

In spite of the existing laws and policies that deal with traditional harmful practices, the problem of child marriage is highly prevalent in Ethiopia<sup>76</sup>. The country has one of the highest rates of early marriage in the world, with one in two girls marrying before the age of fifteen<sup>77</sup>. Among the federal districts of Ethiopia, prevalence of child marriage has been highest in northern Ethiopia, with the majority of women marrying early, particularly in Amhara, where the figure reached sixty two percent, and Tigray fifty three in 2009 followed by around 50 per cent in Addis Ababa and Beni-Shangul Gumuz regions<sup>78</sup>.

As Ethiopia is a patriarchal society, religious, cultural traditions and social structures have been used to keep women and children at a subordinate position. These social practices and structures had, for many years, been supported by laws and legislation that legitimize patriarchy, and women and children's subordination<sup>79</sup>. Child marriage is one of those harmful practices deeply embedded in the social, cultural and religious customs of the Ethiopian society.

#### 3.2.2. The Causes of Child Marriage in Ethiopia:

Child marriage is the practice where children, often without their consent, are married, either to other children or to adults. Child marriage is a serious problem as there are frequent cases of young girls being married in Ethiopia. Research findings suggest that historical, religious, cultural and economic factors interact to keep the girl child at risk of early marriage in the country<sup>80</sup>.

<sup>71</sup>Biswajit Ghosh(2011), Child Marriage, Society and The Law: A Study in Rural Context in West Bengal, India, International Journal of Law, Policy and the Family 25(2), (2011), p.200

<sup>72</sup>Robert Jensen and Rebecca Thornton(2003), Early Female Marriage in the Developing World, Gender and Development, Vol. 11, No. 2, p.25

<sup>73</sup>Alula Pankhurst and Yisak Tafere(2013), Harmful Traditional Practices and Child Protection: Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia,p.22

<sup>74</sup>Rita Mutyaba(2011),Early Marriage: A Violation of Girls' Fundamental Human Rights in Africa, International Journal of Children's Rights, Vol.19, p.345

<sup>75</sup>Ibid.

<sup>76</sup>Ibid.

<sup>77</sup>Bimal Kanta Nayak(2013), Child Marriage in Ethiopia -A Matter of Concern, International Journal of Management and Social Sciences Research, Volume 2, No. 7, p.33

<sup>78</sup>Alula Pankhurst and Yisak Tafere(2013), Harmful Traditional Practices and Child Protection: Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia, p.76

<sup>79</sup>Ibid.

<sup>80</sup> Robert Jensen and Rebecca Thornton(2003), Early Female Marriage in the Developing World, Gender and Development, Vol. 11, No. 2,p.15

The practice of child marriage is the very part of the culture of Ethiopian society and the prevailing pressure of patriarchal values and institutions in the society are the major reason behind it<sup>81</sup>. It is rooted in religious and cultural traditions based around protecting a girl's honor as the society considers pre-marital sex a shameful act<sup>82</sup>. A girl's worth is therefore based on her virginity and her role of being a wife and mother. Due to this belief, parents have to give their female children for early marriage to ensure their virginity. A girl who is not virgin at her first marriage is considered unfit and a disgrace to the family<sup>83</sup>. The other reason is to avoid stigmatization by the community. If a girl does not marry early in her life time, people would call her "Komakerech" which literally means she is no longer wanted for marriage<sup>84</sup>. Moreover, there is strong social pressure on families to conform to the practice of child marriage and a failure to do so can often result in disapproval and shame to them<sup>85</sup>. These show that child marriage is the result of discriminatory social, cultural, and religious norms which relate to children's position in the family, the community and the society.

The marriage of children is also valued as a means of consolidating powerful relations between families and for settling disputes<sup>86</sup>. Children's rights as individuals in such situations are often disregarded; they are instead seen as commodities at the family's disposal. While many families marry their daughters early out of traditional obligation, there are also economic reasons behind the decision. As the majority of the society is under poverty, marrying a daughter off would often help to relieve the burden on highly constrained family economy<sup>87</sup>. In many of the cases, the families are poor, and, for them, one less daughter is one less mouth to feed.

Generally speaking, when it comes to causes of child marriage in Ethiopia, there is a vicious circle between the continuation of the practice of child marriage and the causes behind it. Religious and cultural justifications that emanate from mythical and spiritual sources about the purity of marriage when girls are married at their youngest age, the abject poverty and limited socio-economic choices, and the desire to have large numbers of children are the main driving factors for the practice of child marriage in the country. The vicious circle is there for child marriage in turn reinforces these casual factors. Pre-marital sexual life is a taboo among the Ethiopian society for religious reasons. So as to avoid the possibility of pre-marital sex, the society and its religious leaders condone the practice of child marriage. And children married at their youngest age would have no education and other option except having large families from the early age. Having such large families aggravates poverty and forces the children-turned-parents to arrange marriage to their children to cope with economic problems.

Moreover, women who have bad experience of child marriage at their youngest age are usually the principal advocates of the practice of child marriage. They praise the differences in power and age between men and women in traditional marriages, and favor the wisdom of parents arranging marriages for their children at their youngest age<sup>88</sup>.

### 3.2.3. The Consequences of Child Marriage in Ethiopia:

Child marriage has several harmful effects on psychological development, economic survival, and education of children. The unequal power relations that exist between brides expose the girl child to various forms of violence. The child bride is also socially conditioned to believe that women are inferior to men and are expected to serve their husbands, obey their orders and satisfy their sexual needs<sup>89</sup>.

<sup>81</sup> Biswajit Ghosh(2011), Child Marriage, Society and The Law: A Study in Rural Context in West Bengal, India, International Journal of Law, Policy and the Family 25(2), p.200

<sup>82</sup>Brenda Rodgers(2012), Child Marriage in Ethiopia and its Associated Human Rights Violations UW BOTHELL POLICY JOURNAL,p.28

<sup>83</sup>Ibid.

<sup>84</sup>United Nations Division for the Advancement of Women(2009), Good Practices in Legislations on "Harmful Practices" Against Women, p.22

<sup>85</sup>Ibid.

<sup>86</sup>Ibid.

<sup>87</sup>Alula Pankhurst and Yisak Tafere(2013), Harmful Traditional Practices and Child Protection: Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia,p.53

<sup>88</sup> Harmful Traditional Practices

and Child Protection:

Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia

Jo Boyden, Alula Pankhurst and Yisak Tafere

FEBRUARY 2013

<sup>89</sup>Naana Otoo-Oyortey and Sonita Pobi(2003), Early Marriage and Poverty: Exploring Links and Key Policy, Gender and Development, Vol. 11, No. 2, p.46

Once marriage is effected, girls are under pressure to consummate the marriage by giving birth. This would expose them to violence, rape, and forced pregnancy which is one of the principal causes of higher maternal mortality rates in the country<sup>90</sup>.

Child marriages also impede young girls' education. The fact that a child will get married plays a big obstacle to young girls' education. Due to the lack of education, the married girls would not be empowered socially and economically, and they lack decision making power and the ability to negotiate with partner over family affairs<sup>91</sup>. Child marriage violates a girl's right to a future, and by doing so perpetuates the feminisation of poverty. It does this by denying girls opportunities and compromising their development in areas such as education, livelihood skills and personal growth<sup>92</sup>. And this in turn keeps the vicious circle of poverty in the society.

In short, child marriage is the root cause of school dropout, gender-based violence, social isolation, poverty, maternal mortality, poor mental health and sexually-transmitted infections, among others, in Ethiopia.

### 3.3. The Normative and Institutional Framework to Address the Practice of Child Marriage in Ethiopia:

#### 3.3.1. The Normative Framework:

When international human rights laws are adopted or made part of the domestic legal systems, they are intended, at least in principle, to transform and change the culture and traditions of the society. That, however, may not always be the case as adoption of human rights laws may also be cynical and for political end. Moreover, even if human rights are adopted out of sincerity, they may, for different reasons, lack effective enforcement. The society may be non-amenable to changes and as such oppose human rights implementation. For instance, the society may reject human rights in favour of its age-old customs and traditions. Despite these, the obligations of states, under international human rights laws, is to bring social and cultural transformations by overcoming the challenges posed by entrenched cultural traditions and customs among their society. This is especially the case when it comes to addressing harmful cultural practices affecting women and children. This obligation of effecting social and cultural transformation among the society is possible through adoption of appropriate normative and institutional frameworks to enforce and fulfil the substantive human rights of individuals and groups especially of women and children.

In line with these international human rights obligations, the normative frameworks purported to address the practice of child marriage in Ethiopia consists of the constitutional provisions, subsidiary laws, policies and ratified international human rights instruments.

The Ethiopian constitution contains key articles for the pursuit of the rights of the child. Article 36 of the constitution replicates many of the rights in the Convention on the Rights of the Child. Moreover, all the human rights provisions of the constitution are equally applicable to children. The constitution also provides for the consideration of the best interests of the child by both private and public organs in their decisions relating to children<sup>93</sup>. It establishes that the best interests of the child shall be the primary consideration in all actions concerning children by public institutions, courts of law, administrative authorities or legislative bodies<sup>94</sup>. The right to equal protection of the law, equality in marital affairs, protection of children and women from harmful traditional practices, abuses and exploitations and the right to equality in marriages are also human rights provisions enshrined under the constitution<sup>95</sup>.

After the adoption of the 1994 Ethiopian constitution, several pieces of legislations affecting children's rights have been promulgated. One of these is the Revised Family Code of 2000 which deals with marriage and family life. The Revised Family Code dwells upon marriage and other issues which pertain to children's rights protections<sup>96</sup>. Though this law does not define the term child *per se*, the related concept of minor is defined as a person of either sex who has not attained the

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Anastasia J. Gage(2013), Child marriage prevention in Amhara Region, Ethiopia: Association of communication exposure and social influence with parents/ guardians' knowledge and attitudes, Social Science & Medicine, Vol. 97, No.124, p.20

<sup>93</sup> Ibid.

<sup>94</sup> Article 36(2) of the FDRE Constitution

<sup>95</sup> Zewdineh B. Haile(2008), Review of the Legal and Policy Frameworks Protecting the Rights of Vulnerable Children in the Federal Democratic Republic of Ethiopia, p.21

<sup>96</sup> Ibid.

full age of eighteen years<sup>97</sup>. Accordingly, the minimum age for marriage have been eighteen years for both women and men unlike the previous laws that provided fifteen years as an age of marriage for women<sup>98</sup>. The consent parameters of the Revised Family Code also consider marriage to be valid only if the spouses have given their free and full consent to it<sup>99</sup>. This is a significant change in dealing with child marriage as it abolishes most of the discriminatory provisions in the the previous laws concerning marriage and family life.

The 2005 Ethiopian Criminal Code, on its part, introduced various changes and addressed several gaps of the previous laws with a view to ensure compatibility with the provisions of the constitution and human rights instruments ratified by Ethiopia. Accordingly, the criminal law proscribes several harmful traditional practices inimical and prejudicial to the rights and welfare of children. For child marriage, the Criminal Code provides that getting married to minors carries a punishment of rigorous imprisonment up to three year terms<sup>100</sup>. On the other hand, articles 561-570 of the Criminal Code outlaw harmful traditional practices including child marriage and set out various degrees of punishment depending on the degree of harm to the victims<sup>101</sup>. These provisions of the Criminal Code reinforce the constitutionally guaranteed human rights of children by protecting them from traditional practices that are known to be harmful to their health and wellbeing.

In addition to these, the Ethiopian government has adopted several major policies which aim at ensuring that children are given opportunities to develop in a healthy manner to ensure the protection of their rights. These include the draft comprehensive National Child Policy, National Policy on Ethiopian Women, the National Youth Policy and the National Policy on HIV/AIDS<sup>102</sup>. These policies are meant to provide guidance to the work of various actors dealing with children's rights<sup>103</sup>. The Development and Social Welfare Policy (1996) is also introduced to implement international standards provided to children, to fight against harmful traditional practices, abuses and exploitation of children<sup>104</sup>.

Besides these, the international and regional human rights instruments ratified by Ethiopia are considered an integral part of the normative framework of the country as recognized by the constitution<sup>105</sup>. These adopted international and regional human rights instruments guarantee the right of all individuals to enter in to marriage with their free and full consent<sup>106</sup>. They all provide that any marriage entered before the age of eighteen years would be in violation of the requirement of full consent as consent cannot be legally binding when a person is below the conventional age of maturity. More importantly, the Convention on the Elimination of all forms of Discrimination against Women, as ratified by Ethiopia, calls for a robust legal and policy measures to deal with harmful traditional practices that are more discriminatory towards women and children. It obligates ratifying states to ensure that women have the same rights, on the basis of equality with men, to choose a spouse and to enter in to marriage with their free and full consent<sup>107</sup>. This obligation has been further reinforced by the Committee on the Elimination of All Forms of Discrimination against Women and the Committee on the Rights of the Child which establish that the safeguard of the right to free and full consent to enter marriage cannot be opted even in plural legal systems that include both the customary and statutory laws<sup>108</sup>. This is an important clarification of human rights obligations for countries like Ethiopia with plural legal systems and cultural values that compete with the human rights of children. Similarly, the Convention on the Rights of the Child, which is also ratified by Ethiopia, provides that states should take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health and well-being of children<sup>109</sup>. These all indicate that child marriage, like female genital mutilation, is one of the traditional practices recognized by all international human rights instruments as being prejudicial to the rights of children.

<sup>97</sup>UN Women(2011), Domestic Violence Legislation and its Implementation An analysis for ASEAN countries based on international standards and good practices, p.105

<sup>98</sup>Ibid.

<sup>99</sup>Ibid.

<sup>100</sup>Girmachew Alemu(2009), Handbook on the Rights of the Child in Ethiopia, p.54

<sup>101</sup>Ibid.

<sup>102</sup>Ibid.

<sup>103</sup>Ibid.

<sup>104</sup>Vaibhav Goel(2009), Children's human rights in underdeveloped country: A study in Ethiopian perspective, African Journal of Political Science and International Relations Vol. 3 (4), p.152

<sup>105</sup> Article 13/2 of the The Ethiopian Constitution

<sup>106</sup>The International Covenant on Civil and Political Rights in its article 23, paragraph 3; the International Covenant on Economic, Social and Cultural Rights in its article 10, paragraph 1; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), art. 6 (a);

<sup>107</sup> Art.16 of the Convention on the Elimination of All Forms of Discrimination Against Women

<sup>108</sup> Ibid.

<sup>109</sup> Art.24 Convention on the Rights of the Child

Given the fact that Ethiopia is one of the countries in the world where child marriage is most prevalent, the recognition by its constitution of ratified human rights instruments as part of the domestic legal system is a major development in the normative framework, at least in theory, to address the age old problem of child marriage in the country. Whether that has gone beyond the theory is a question to ask. In this regard, the indication is that most of the international human rights provisions purported to address the practice of child marriage have not been made practical beyond a symbolic formal adoption and recognition<sup>110</sup>. They are confined in the backyard of the theory and the desired social and cultural transformations, in the practice of child marriage, have not been brought.

Besides, Ethiopia does not have a comprehensive and full-fledged child law in the form of a children's act and the existing fragmented legal provisions, under different legal documents, do not directly address child marriage per se. In the absence of such laws, the constitution and the existing subsidiary legislations would remain as being the only instruments to address issues pertaining to children's rights in Ethiopia<sup>111</sup>. Therefore, it is important to note that the legal framework shall practically translate international human rights instruments and combine them with constitutional, civil, criminal and administrative laws to mandate a variety of legal and non-legal measures to address the problem of child marriage and other harmful traditional practices in the country.

### 3.3.2. The Institutional Framework:

States are obligated, under international human rights laws, to enact, implement and monitor legislations on all forms of violence against women, including harmful traditional practices. They have the duty to develop and fully implement laws and other measures to eradicate harmful practices including child and forced marriages<sup>112</sup>. This is with the understanding that unless there are mechanism and institutions by which human rights laws are enforced, their adoption or incorporation in the domestic legal system would not, by itself, bring change and transformations in social attitudes and practices. It is only when human rights laws are enforced through effective mechanisms that they would help bring the desired social and cultural transformations. For this to happen, institutional frameworks are as necessary as normative frameworks in the bid to tackle the practice of child marriage. Taking these into account, the protection of the rights of children through institutional framework is part of the broader framework of international human rights systems which includes adoption, enactment, and enforcement of human rights laws and policies.

In federal systems like Ethiopia, the responsibility of human rights laws enforcement is shared between central and regional government organs at different levels. Accordingly, there are three branches of the government that deal with the formulation and enforcement of legal and policy frameworks dealing with children. The first important organ is the legislature that enacts the laws, approves international human rights instruments and follow up their implementation by administrative organs. The ministerial organs are responsible to enforce human rights laws while the judiciary is entrusted with their interpretation.

In Ethiopia, at the federal level, the Council of Ministers is responsible for the formulation of policies and enforcement of laws in its administrative frameworks<sup>113</sup>. Accordingly, the Ministry of Women, Youth and Children's affairs is established to deal with the enforcement of laws and policies that deal with children and women all over the country<sup>114</sup>. Furthermore, the Ethiopian Human Rights Commission and Ombudsman institutions are part of the federal organs that deal with human rights protections including children's rights<sup>115</sup>. At regional levels are State Women and Children Affairs Offices responsible to implement laws and policies that deal with the protection of the rights of women and children in their respective administrative provinces.

So far, we have seen the normative and institutional frameworks that are purported, or can be applied, to deal with the practice of child marriage in Ethiopia. Whether these normative and institutional frameworks have been adequate, both in theory and practice, to change and transform the culture and attitude of the society and thereby tackle the practice of child marriage is another issue to be discussed below.

<sup>110</sup> Eva Brems(2007), Ethiopian Before the United Nations Treaty Monitoring Bodies, Afrika Focus, Vol. 20,p.67

<sup>111</sup>Vaibhav Goel(2009), Children's human rights in underdeveloped country: A study in Ethiopian perspective, African Journal of Political Science and International Relations Vol. 3 (4), p.147

<sup>112</sup>United Nations Division for the Advancement of Women(2009), Good Practices in Legislations on "Harmful Practices" Against Women, p.56

<sup>113</sup>Ibid.

<sup>114</sup>Ibid.

<sup>115</sup>Ibid.



### 3.3.3. Assessing the Normative and Institutional Frameworks:

Human rights protection constitutes a regulatory regime which is a system of standards, institutions, and processes that are designed to control the actions of those involved in certain activities in order to achieve certain goals<sup>116</sup>. Though the adoption of international human rights is the first important step in the protection and promotion of human rights of individuals, it is not, however, an end by itself. The state's formal laws and policies should comply with those international human rights principles and values. They should also be effectively enforced through appropriate mechanisms. It is through this way that international human rights principles would be accepted and adhered to by the society at large and thereby bring about changes in social and cultural attitudes and practices.

The practice of child marriage as a human rights violation has to be enforced through regulatory regimes that give rise to state obligations to address it. First, states are required to put in place zero-tolerance policies on child violence, thereby ensuring no impunity for perpetrators<sup>117</sup>. Second, states should revoke laws and policies that either perpetuate or condone violence against children. Furthermore, they should enforce equality standards in all spheres, particularly with regard to equality in marriage to reduce the vulnerability of children to violence<sup>118</sup>. Third, states are obligated to take special measures to prevent and respond to harmful practices affecting women and children<sup>119</sup>. This should also include measures to increase access to speedy and effective justice as well as access to support services to sustain survivors of violence when navigating the justice system<sup>120</sup>.

In Ethiopia, the issue of violence against children is addressed by various laws, policies and programs. First and foremost, the 1994 constitution, which is the supreme law of the land, provides a sound framework for the protection of the rights of children. In addition to providing mechanisms for domesticating human rights instruments ratified by Ethiopia, the constitution contains key articles for the pursuit of the rights of the child. The principle of the best interest of the child is also part of the constitutional provisions<sup>121</sup>. Moreover, in line with the constitution, the revised family law has revoked the age-old family legislation that had embraced harmful traditional practices including child marriages<sup>122</sup>. These developments have been backed by a criminal legislation that outlaws harmful traditional practices as punishable offences<sup>123</sup>. These normative frameworks, taken together, are meant to transform and change the customs and traditions of the society with regard to child marriage so that the rights and interests of children would be safeguarded in line with international human rights standards.

There are, however, shortcomes in the normative and institutional frameworks to address the problem of child marriage in Ethiopia. One of the problems is the constitutional recognition given to customary and religious laws. The constitution has permitted the adjudication of disputes relating to personal and family matters in accordance with religious and customary norms<sup>124</sup>. The role of customary and religious norms is very high in day to day life of the society besides formal adjudication envisaged by the constitution. And this provision of the constitution has been an excuse in some communities to pursue child marriage as part of their custom and tradition<sup>125</sup>. To avoid this gap, the government has to enact a law that would clearly demarcate what is clearly allowed and what is not allowed for adjudication in accordance with religion and custom. That demarcation should be backed by strict enforcements to make sure its observance by all religious and traditional communities.

The Absence of proscription of marital rape is another daunting problem exacerbating the situation of victims of child marriage. In Ethiopia, consumation of marriage is an obligation between spouses as provided under the family law<sup>126</sup>. This means that a child spouse does not have a right to refuse against forced sexual intercourses. This absence of prohibition of marital rape has made girls subject to cruel and painful sexual acts, pregnancy and associated health complications at their youngest ages<sup>127</sup>.

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<sup>116</sup>Ibid.

<sup>117</sup>Sonia Harris-Short (2003), International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child, 25 Hum. Rts. Q. 130, p.231

<sup>118</sup>Ibid.

<sup>119</sup>Ibid.

<sup>120</sup>Ibid.

<sup>121</sup>Girmachew Alemu(2009), Handbook on the Rights of the Child in Ethiopia, p.38

<sup>122</sup>Ibid.

<sup>123</sup>Ibid.

<sup>124</sup>Ibid.

<sup>125</sup>The Revised Family of Ethiopia Code Proclamation No. 213/2000, art.13

<sup>126</sup>Ibid.

<sup>127</sup>Ibid.

Though the minimum age of marriage is eighteen years in Ethiopia, the family law authorises the Minister of Justice to allow marriages of persons aged below eighteen years through the consent of their parents<sup>128</sup>. Such an approach, of having exceptions to the minimum age of marriage, would violate the children's right to protection, as parental consent may be abused for various socio-cultural and economic reasons. For example, families may try to convince the authorities to let their children get married in order to avoid embarrassment from pre-marital pregnancy of their children. Taking this and other possible abuses into account, this exception allowing underage marriage with parental consent needs to be abolished so as to ensure the full protection of children's rights.

On the other hand, the Ethiopian law recognizes three types of marriages. The civil marriage, mostly common in urban areas, is conducted before a government authority responsible to ascertain age and consent of the intending spouses<sup>129</sup>. The other types of marriages are customary and religious marriages which take place in accordance with religion and customs. These latter types of marriages are widely practiced by majority of the Ethiopian society<sup>130</sup>. However, the legal recognition of these latter types of marriages is very problematic. It is because these marriages would create a fertile ground for religious and customary leaders to continue their practice of child marriage. And for that matter, the religious and customary leaders are the main proponent of child marriage in the country.

Moreover, the Ethiopian law doesn't clearly make child marriage null and void and many families escape doing that<sup>131</sup>. Child marriage per se continues to be legally valid unless either of the parties to the marriage wishes to nullify it, which seldom happens in practice<sup>132</sup>. As a result of these, it can be said that the law has little deterrence effect<sup>133</sup> against child marriage. When laws lack deterrence and reformation values in dealing with child marriage, changes in social and cultural attitudes on the practice would be difficult to achieve. Proponents of child marriage would not shun their pursuit of the tradition as they are able to use the gaps in the laws and enforcement mechanisms. This has made changes in social and cultural attitudes on child marriage an unfulfilled prophecy in Ethiopia.

Among the the enforcement mechanisms for the protection of the rights of children from child marriage, birth registration is of paramount importance. A universal and effective system of birth registration is critical as proof of age is essential to ensure that children are not deprived of the protection from premature marriages<sup>134</sup>. Though birth registration is this much essential for the protection of children, Ethiopia, however, is one of the countries without a functional national system for the registration and certification of births and marriages<sup>135</sup>. The domestic law does not oblige parents to register children immediately after birth, and there is no access to registration mechanisms<sup>136</sup>. This absence of birth and marriage registration is promoting the practice of child marriage in the country. The society at large uses these legal and practical gaps to push the tradition as there are no evidences, like birth certificates, by which the age of the parties to the marriage can be verified<sup>137</sup>. Therefore, making birth and marriage registration compulsory and practical is very essential to ensure the fulfilment of the conditions as to the age and consent of parties to the marriage. These mechanisms need due consideration in the move to curb the entrenched culture and tradition of child marriage among the society.

In the enforcement of human rights, states are advised to use various mechanisms to reach out their society. And creation of awareness among the society is one of these mechanisms. It is only when the society knows about the rights of children that the protection of human rights would be more effective. The creation of awareness about the rights of children and sensitization of the harmful effects of child marriage to the general populace is important to bring changes in the attitude of the society on the practice of child marriage. However, in Ethiopia, there are no available publications of the contents of international human rights to the general public<sup>138</sup>. Although proclamations have been issued confirming ratification of

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<sup>128</sup>Ibid.

<sup>129</sup>Art.4 of the Revised Family Code of 2000

<sup>130</sup>Ibid.

<sup>131</sup>Zewdineh B. Haile(2008), Review of the Legal and Policy Frameworks Protecting The Rights of Vulnerable Children in the Federal Democratic Republic of Ethiopia, p.17

<sup>132</sup>Ibid.

<sup>133</sup>Deterrence of law is there when a certain activity is clearly prohibited and corresponding sanction is established against transgression.

<sup>134</sup>Ineta Ziemele (2007), a commentary on the United Nations Convention on the Rights of the Child. Art. 7 the right to birth registration, name and nationality and the right to know and be cared for by parents, Martinus Nijhoff Publishers, p.13

<sup>135</sup>Ibid.

<sup>136</sup>Ibid.

<sup>137</sup>Jacqueline Mercier(2006), Eliminating Child Marriage in India: A Backdoor Approach to Alleviating Human Rights Violations, Boston College Third World Law Journal Volume 26, Issue 2,p.19

<sup>138</sup>Ibid.

international human rights instruments, their contents are rarely available to the public<sup>139</sup>. This has created lack of awareness about international human rights laws even among the duty bearers and law enforcement agencies<sup>140</sup>. Hence, there is a need to publish the full text of international human rights instruments in vernacular languages to enforce the wider protection accorded to children. Ethiopia should also undertake dissemination and awareness raising activities in vernacular languages among relevant professional categories, parents and among children themselves, particularly in rural areas. This is because a comprehensive campaign of education and awareness raising about human rights of children is one of the mechanisms by which the attitudes and practices of the masses will be eventually changed and grassroots support for the rights of children will be secured. It would help entrench a human rights culture among the populace and thereby improve human rights implementation and help overcome the threat of cultural resistance to human rights of children and women in the form of communal cultural relativism.

Access to justice is another important element in the enforcement of human rights. In Ethiopia, however, due to the lack of awareness among the society about the rights of children and the harmful nature of child marriage and lack of institutional platforms, access to justice is very limited<sup>141</sup>. There is little chance for children affected by harmful traditional practices to seek recourse through the formal justice system<sup>142</sup>. This absence of an effective enforcement procedure would make the rights declared in the constitution merely aspirational or declaratory statements that use the rhetoric of rights, without providing practical relief and remedies for women and children.

The government has also failed to provide incentives for delayed marriage, implement community based mobilization programs for raising awareness on the negative impacts of child marriage<sup>143</sup>. And the measures taken by Ethiopian government, under the existing normative and institutional frameworks, have not led to changes in values and attitudes of the society with regard to child marriage<sup>144</sup>.

As discussed before, harmful traditional practices such as child marriage help replicate and perpetuate the subordinate position of women and children in the society. They are caused by the deeply entrenched social, cultural and religious norms that compete with human rights values and relegate women and children to the lowest spot in the social strata<sup>145</sup>. Addressing this practice needs the integration of various stakeholders such as the government organs, the private organs, the society and children themselves. This integration of the stakeholders can be helpful to enforce human rights laws effectively and thereby bring cultural and attitudinal changes on the practice of child marriage among the general public.

On the otherhand, the challenge to international human rights norms, as indicated before, may not necessarily come from an open opposition by state parties. It may also come in the form of alleging difficulties to enforce human rights against a backdrop of entrenched cultural practices. It may still be manifested through indifference by the state to cultural practices that contravene human rights or by not taking the necessary and required legal and practical steps in this regard. Likewise, the challenge to the human rights of children in Ethiopia seems to take the form of indifference and absence of taking the necessary legal and practical steps, on the part of the government, to fight the entrenched culture of child marriage among the society.

Generally speaking, there are two problems in the protection of children from the practice of child marriage in Ethiopia. First there are loop-holes in the laws. And the laws also lack comprehensiveness in their scope and approach to address the problem. Secondly, there are problems in enforcing the existing laws due to lack of awareness among the society about children rights, and absence of institutional mechanisms for birth and marriage registrations, among others.

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<sup>139</sup> Ibid.

<sup>140</sup> Alula Pankhurst and Yisak Tafere(2013), Harmful Traditional Practices and Child Protection: Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia, p.28

<sup>141</sup> Rebeca Rios-Kohn(2006), A Comparative Study of the Impact of the Convention on the Rights of the Child: Law Reform in Selected Common Law Countries , Cambridge University Press/CAMBRIDGE UNIVERSITY PRESS, p.33

<sup>142</sup> Anastasia J. Gage(2013), Child marriage prevention in Amhara Region, Ethiopia: Association of communication exposure and social influence with parents/ guardians' knowledge and attitudes, Social Science & Medicine 97, p.135

<sup>143</sup> Jacqueline Mercier (2006), Eliminating Child Marriage in India: A Backdoor Approach to Alleviating Human Rights Violations, Boston College Third World Law Journal Volume 26, Issue 2, p.15

<sup>144</sup> Harmful Traditional Practices and Child Protection: Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia, Jo Boyden, Alula Pankhurst and Yisak Tafere FEBRUARY 2013

<sup>145</sup> Zewdineh B. Haile(2008), Review of the Legal and Policy Frameworks Protecting the Rights of Vulnerable Children in The Federal Democratic Republic of Ethiopia, p.25

Therefore, in the fight against harmful practices such as child marriage, Ethiopia needs to harness its laws and policies and the mechanisms for their enforcement. A clear and comprehensive prohibition of all sorts of harmful traditional practices with the required and pragmatic mechanisms for their enforcement is necessary. Moreover, legislations should ensure a pro-active investigation of incidents and establish the accountability of perpetrators of harmful practices against children, including those aiding or condoning the practice. Standards establishing an obligation to report incidents of harmful practices should be incorporated in laws. It should also ensure the universal and mandatory registration of births and marriages.

In nutshell, legislation should be comprehensive and multidisciplinary, criminalizing all forms of violence against women, and encompassing issues of prevention, protection and support as well as adequate punishment of perpetrators. It is primarily in these ways that human rights laws can bring the desired change in the culture and traditions of the society.

### 3.4. The Challenges of Addressing Child Marriage in Ethiopia:

The very purpose of the adoption and enforcement of human rights laws is to shape the culture and practice of the society there by ensuring the protection of the rights and freedoms of individuals. But when the tradition and culture of the society is in a collision course with human rights values, there would be a huge challenge to enforce them and transform the perceptions and attitudes of the society as it is the case in Ethiopia. However, the existence of cultural resistance to the enforcement of human rights values cannot be an excuse for state failures to overcome the challenge and ensure the human rights of individuals especially of women and children. This opposition and resistance to enforcement of human rights to eliminate the practice of child marriage is a form of cultural relativism the community adheres to for various religious, socio-cultural and economic reasons.

Child marriage and other traditional values are sources of pride and identity among the Ethiopia society. And efforts to eliminate the practices would be met with strong reaction from the society as that would be against its social structures and traditions. This is because measures taken so far by the Ethiopian government in addressing the practice of child marriage have proved unable to bring the desired changes in values and attitudes of the society<sup>146</sup>. Moreover, the Ethiopian society is resistant to change, and family members use different strategies to give their children for marriage by changing places and reporting a falsified ages<sup>147</sup>. As in many other traditional societies, in Ethiopia, there is no cultural support for human rights at the grassroots level. Rather the support among the society is to keep intact child marriage and other cultural practices that conflict with the human rights of women and children. And any criticism of the cultural practice can generate negative reactions from the society.

Due to these facts, the Ethiopian government has to take in to account cultural sensitivities to the practice of child marriage among the society. The human rights laws need to be enforced cautiously so as to contain a hostile reaction from the public. It is very important to ensure, while enforcing human rights to change the practice of child marriage, that the society do not feel that its social structures and cultural values are being undermined. The society should also be allowed to deliberate on the rationales for changes in child marriage and the benefits thereof to the children and the society in general. This deliberation on the benefit of abandoning the practice of child marriage, on the one hand, and the harmful effects of the practice, on the other hand, would make the society feel respect and become less hostile to changes. That would make the transformation of the society a possibility.

As the Ethiopian society is gender-insensitive and less aware of the rights of children, addressing the practice of child marriage needs a well-considered approach. Tackling the practice would be an uphill task as it is ultimately tantamount to dismantling those age-old institutions, practices and values that are among the society. And that is why measures to curb child marriages are advised to address existing power equations among the society and understand and challenge existing patriarchal, religious, and customary practices<sup>148</sup>.

The other challenge in addressing child marriage would be creating alternative opportunities that would help motivate families to shun the tradition. To avoid economic burden to the family, parents prefer to give their children for marriages<sup>149</sup>. Moreover, the majority of the society is illiterate and there exists a negative attitude towards children's rights

<sup>146</sup>Jo Boyden, Alula Pankhurst and Yisak Tafere(2013), Harmful Traditional Practices and Child Protection:Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia,p.23

<sup>147</sup>Ibid.

<sup>148</sup>Sonia Harris-Short(2003), supranote 195

<sup>149</sup>Ibid.

and a strong resistance among the public for being told about leaving the practice<sup>150</sup>. Hence, breaking these economic problems, belief systems and illiteracy and unawareness issues would be a challenge to deal with child marriage in Ethiopia.

On the otherhand, though birth and marriage registration processes are important to ensure that the parties to a marriage are of age and free to engage, official birth records are less available for the majority of the society in the country<sup>151</sup>. There is also a high illiteracy rates that prevent the society from getting birth and marriage registrations<sup>152</sup>. Hence, in addition to creating awareness and raising literacy rates for the society and establishing the necessary institutional platforms for marriage and birth registration, the government should devise interim measures such as oral registrations as a short term solution to the problem. And it is also essential that any marriage registration system make the registration of all marriages, whether statutory, customary or religious, a mandatory requirement.

The other challenge in addressing the practice of child marriage in Ethiopia is the absence of pro-active approach in the enforcement of laws in the country. Most of the laws that deal with child rights violations depend on victims' complaint for their enforcement<sup>153</sup>. As the society defends the practice of child marriage, complaints to authorities by child victims are a remote possibility. Due to this, any successful strategy of child marriage prevention must engage the key stakeholders in the community to come up with an alternative strategy through a combination of prevention and protection mechanisms.

In addition to these, coping with the loop-holes in the laws that deal with marriage would be another challenge to the government. This is because the constitution and the family law have recognized the conclusion of marriage in accordance with religious and customary laws<sup>154</sup>. And the existing customary and religious laws, among the society, are practically the driving forces behind the prevalence of child marriage in the country

The absence of recognition of child marriage as human rights violations is still a challenge that needs to be reconsidered by the Ethiopian government. Child marriage is merely recognized as a social evil short of human rights violation<sup>155</sup>. This has led the practice of child marriage to be sidelined as a social issue that would be gradually eliminated when social and economic changes occur over periods of time. This shows that the political will and the commitment on the part of the government is insignificant compared to the nature of the problem and its grave consequences on the rights of the child

In nutshell, the lack of cultural legitimacy for human rights at the grassroots level, the resistance by the society to changes in the practice of child marriage, the perception by the society of child marriage as part of its cultural identities, the socio-economic reasons behind child marriage, absence of the required institutional and legal frameworks to address the problem and unawareness of the society about the rights of children are some of the challenges that the government has to deal with. It is by overcoming these challenges and enforcing international human rights laws that the government could bring the desired attitudinal and cultural changes in the practice of child marriage.

### **3.5. A Human Rights Based Approach to Address the Practice of Child Marriage in Ethiopia:**

A human rights-based approach is an approach to policy development work that draws on agreed international human rights and includes seeking legal remedies to enforce those rights<sup>156</sup>. This approach works from the position that international human rights standards place an obligation on governments to ensure that their plans and policies uphold and promote the rights of individuals and groups<sup>157</sup>. Essentially, a rights-based approach integrates the standards and principles of international human rights systems into the plans, policies and processes of governments<sup>158</sup>. These principles include legitimacy, accountability and transparency, empowerment, participation, non-discrimination and attention to

<sup>150</sup>Ibid.

<sup>151</sup>United Nations Division for the Advancement of Women(2009), Good Practices in Legislation on "Harmful Practices" Against Women, p.122

<sup>152</sup>Ibid.

<sup>153</sup>Biswajit Ghosh(2011), Child Marriage, Society and The Law: A Study In Rural Context in West Bengal, India, International Journal of Law, Policy and the Family 25(2), p.205

<sup>154</sup>Ibid.

<sup>155</sup>Ibid.

<sup>156</sup>Ibid.

<sup>157</sup> A Handbook on Using a Human Rights-based Approach to Achieve Social Inclusion and Equality, 2007, p.45

<sup>158</sup>Ibid.



vulnerable groups<sup>159</sup>. Human rights-based approaches serve to empower communities and individuals to claim and defend their rights and maximize their participation in all legal and policy frameworks of their country<sup>160</sup>. Moreover, the prioritisation of vulnerable groups and the principle of non-discrimination is a central theme of a human rights based approach as a means to ensure particular protection of their rights and interests<sup>161</sup>. Through its accountability principle, human rights based approach provides a mechanism by which government organs are held answerable for their duties under international human rights laws<sup>162</sup>.

A human rights based approach adopts both a top-down and bottom-up approach to enforce human rights<sup>163</sup>. The first approach is to mean that the state should, as its primary duty, implement human rights laws to bring about changes in the practices and attitudes of the society on the practice of child marriage. This is a top-down transformation of the attitudes and beliefs of the society on the tradition of child marriage through the enforcement of human rights laws. The second approach, on the other hand, is about the engagement of the society, and a dialogue between the state and the society in the enforcement of human rights laws to protect the rights and interests of children. These human rights-based approaches would be helpful to address the practice of child marriage in Ethiopia. This is because, traditional practices, including child marriage, that compete with human rights values, are embraced by the Ethiopian society. And this would pose a challenge to an effort aimed at addressing child marriage through human rights implementation. This type of challenge to human rights laws is a form of 'communal cultural relativism' that stands diametrically opposed to human rights values. As human rights based approach relies not just on formal enforcement of human rights laws, but also on internal discourse of cultural practices, it would help the society compare the benefits of protecting human rights of children with the consequences of the continued practice of child marriage. It would let internal discourse of the practice among those who advocate it to realize that the harm caused by the practice outweighs its perceived social values and benefits<sup>164</sup>. Moreover, a human rights based approach allows a legitimate criticism of cultural practices within a human rights framework<sup>165</sup>. In human rights based approach, cultural practices can be criticized from the perspectives of the best interests of the child which is a pillar principle for the protection of the rights and well-being of the child under international human rights laws. Through this, the practice of child marriage can be subjected to an internal critique and the arguments used to support it cannot be defended from the perspectives of this principle<sup>166</sup>.

The engagement of the society in the internal discourse of child marriage would also mute the possible negative reactions to human rights law enforcement as the society would feel that it is also part of the solution to the problem. Besides this, the engagement of the society would help the government take into account the cultural sensitivities, views and perceptions of the society with regard to child marriage<sup>167</sup>. This is because, as indicated above, a human rights based approach is not just about the application of human rights law in its strict sense but also taking into account the cultural rationales and the sensitivities of the society.

On the other hand, through public participation, sensitization and awareness raising about rights, a human rights based approach aims at changing the attitudes and practices of the society from the grassroots levels which would in turn help entrench human rights values among the people. The communal cultural relativism, societal resistance and opposition to the implementation of human rights norms to address the practice of child marriage so to say, is common in traditional societies like Ethiopia. For this, a human rights based approach is of paramount importance to alleviate the resistance to human rights values as it takes in to consideration the views, perceptions, attitudes and possible reactions of the society in the implementation of human rights norms.

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<sup>159</sup>Ibid

<sup>160</sup>Ibid.

<sup>161</sup>Ibid.

<sup>162</sup> Stephen A. James(1994), Reconciling International Human Rights and Cultural Relativism: The Case of Female Circumcision, Volume 8 Number 1, p.27

<sup>163</sup> Zewdineh B.Haile(2008), Review of the Legal and Policy Frameworks Protecting the Rights of Vulnerable Children in The Federal Democratic Republic of Ethiopia, p.22

<sup>164</sup>Obiajulu Namuchi (2012), "Circumcision" or "Mutilation"? Voluntary or Forced Excision?

Extricating the Ethical and Legal Issues in Female Genital Ritual, 25 J.L. & Health 85, p.37

<sup>165</sup>Kristin Louise Savell(1996), Wrestling with Contradictions: Human Rights and Traditional Practices Affecting Women, 41 McGill L. J. 781, p.43

<sup>166</sup> Michael Freeman( 2007 ), Acommentary on UN Coneytion on the rights of the child, art.3 the best interest of the child, p.31

<sup>167</sup>Jacqueline Mercier(2006), Eliminating Child Marriage in India: A Backdoor Approach to Alleviating Human Rights Violations, Boston College Third World Law Journal, Volume 26 , Issue 2,p.54

Moreover, a human rights based approach is based on the universality, interdependence and interrelatedness of human rights, equality and non-discrimination, accountability and respect for the rule of law<sup>168</sup>. This includes addressing a wide range of human rights, from social, cultural and economic rights, such as the right to health and education, as a single whole sum. A human rights based approach not only outlaws violations of human rights as a matter of deterrence but also focuses on addressing the root causes behind the violations<sup>169</sup>. For instance, as regards to the rights and welfare of children, a human rights based approach stands from the recognition that poverty is often linked with their human rights abuses<sup>170</sup>. Based on this, it requires for a legal system to formulate and implement socio-economic policies and programmes that build upon the capacity of children, families and communities and strengthen their resilience against economic challenges that lead them to marry off their children<sup>171</sup>. This is possible through education, creating job opportunities for families and the community, and a human rights based approach is the right means in this regard. It is for these reasons that human rights based approach would be the right mechanism to address child marriage from its root causes as abject poverty and high illiteracy rates and lack of economic and education opportunities are some of the driving factors behind the practice in Ethiopia.

A human rights based approach involves identifying the stakeholders, rights holders and duty bearers in the protection and enforcement of human rights. The right holders are children while the duty bearers are governments and societies<sup>172</sup>. A human rights based approach requires that the state and the society accept responsibility for the impact traditional practices of child marriage have on human rights of children and thus cooperate in responding to these harmful practices. On the other hand, this approach seeks to empower the rights' holders (the children) to demand accountability and seek justice against violations of their rights<sup>173</sup>. By doing so, a human rights-based approach helps establish a clear system of rights and corresponding obligations among the stakeholders. And this approach can be used to address the problem of child marriage in Ethiopia by synchronizing the rights of the child, the practice of child marriage and the obligations of the state and the community.

Child marriage is not only an issue of domestic violence but also an issue of communal and gender based violence<sup>174</sup>. For this, the socio-cultural attitudes and practices on child marriage can be changed through a collective approach under a human rights based framework<sup>175</sup>. This is possible through the mobilization of diverse actors at different levels, including community leaders, survivors of harmful practices, government officers and relevant non-state actors. With their influential voice and initiatives, community leaders can enhance awareness among the community about the detrimental impact of harmful practices on children. They can also clarify that these practices cannot be based or legitimized by religion and custom, and support a process of social change that can lead to lasting abandonment of those practices.

This kind of mechanism has got practical recognition by many states in dealing with harmful traditional practices. Several state delegations appearing before the Child Rights Committee have commented that they have been seeking to utilize the influence held by community leaders over the local population to promote changes in attitude and behavior and to aid the development of a rights-based culture<sup>176</sup>. This is in line with the understanding that if international human rights standards are to be implemented in a manner consistent with their own rationale, the people (who are to implement these standards) must perceive the concept of human rights and its content as their own<sup>177</sup>. Without such a sense of ownership of human rights at the grassroots level, resistance to human rights, the like of communal cultural relativism, is likely to remain strong among the society.

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<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> Sonja Grover(2006), Children's Rights as Ground Zero in the Debate on the Universality of Human Rights: The Child Marriage Issue as a Case Example, Original L. Rev. 72, Vol 2 No 2, p.29

<sup>171</sup> Naana Otoo-Oyortey and Sonita Pobi(2003), Early Marriage and Poverty: Exploring Links and Key Policy Issues, Gender and Development, Vol. 11, No. 2,p.47

<sup>172</sup> Id.p.11

<sup>173</sup> United Nations Division for the Advancement of Women(2009), Good Practices in Legislation on "Harmful Practices" Against Women, p.33

<sup>174</sup> Sonia Harris-Short (2003), International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child, 25 Hum. Rts. Q. 130,p.32

<sup>175</sup> Jacqueline Mercier(2006), Eliminating Child Marriage in India: A Backdoor Approach to Alleviating Human Rights Violations, Boston College Third World Law Journal Volume 26, Issue 2, p.25

<sup>176</sup> Sonia Harris-Short (2003), International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child, 25 Hum. Rts. Q. 130,p.35

<sup>177</sup> Ibid.

If we agree that child marriage is a violation of human rights, then a human rights based approach is critical to address the problem. It helps deal with the socio-economic and cultural problems behind the practice and creates mechanisms to ensure effective implementation of the human rights obligations. A human rights based approach aims at ensuring an adequate legal and institutional framework and adopting long-term strategies and policies, and ensuring effective participation, and access to complaint mechanisms and remedies<sup>178</sup>. In similar tone to these mechanisms of human rights based approach, the Committee on the Elimination of All Forms of Discrimination Against Women has recommended that state parties should take an integrated approach to eradicating child marriage that would include collecting and disseminating information and integrating child marriage into national health policies, inviting assistance from international bodies, and reporting on the progress<sup>179</sup>.

From the discussions so far, it is possible to understand that ending the practice of child marriage is the responsibility of all sectors of the society, the family, the public and private organs. It is the duty of families and the society to protect children and refrain from engaging in harmful practices against them. The state organs, on the other hand, have the primary legal obligations to create the frameworks and conditions to help protect all children from harmful cultures. Within a human rights framework, the state is ultimately responsible for adopting legislation and policies and follow up their effective enforcement.

Generally speaking, human rights based approach is an important policy that we need to follow to address the problem of child marriage in Ethiopia. It helps clearly establish the rights of children and the duties of the community and the state at large vis-a-vis the practice of child marriage. It will help set the best interests of the child at the centre of the practice. A human rights based approach also elevates the issue of child marriage from a mere social evil to a serious human rights problem. This elevation of the practice as a serious issue of human rights would strengthen the corresponding human rights obligation of the government to deal with it. Moreover, a human rights based approach helps devise multi-faceted policies and laws to address the root causes of the problem whether religious, cultural, and economic or any other form. In addition to these, a human rights based approach establishes participation, accountability, transparency, access to justice, goals and plans to abolish child marriage with in a specific time framework.

#### 4. CONCLUSION

Though Ethiopia has ratified international human rights instruments and adopted a constitution that has given recognition to the rights of children since decades ago, child marriage is still widely practiced by the majority of the society. The practice of child marriage has seriously affected the health, life, development, education and opportunities of children in Ethiopia.

This prevalence of the practice of child marriage in Ethiopia is mainly due to religious and customary traditions, socio-economic problems, poverty and the failure of the government to adequately address the problem.

It has to be noted that the very objectives of human rights laws are not only about containing the behavior and activities of governments in their relations with citizens, but also about changing and transforming the culture and customs of the society that stand against the basic human rights of individuals and groups. The latter has more to do with harmful cultural and traditional practices that affect the rights and well-being of women and children. In both cases, it is primarily the obligation of the government to protect, promote and enforce human rights. Whether human rights laws would achieve this objective, however, depends mainly on the commitment of the government to their effective enforcement, and on whether the culture of the society is amenable to changes and can accommodate and embrace human rights values. When the government is not committed to human rights enforcement and the society is opposed to human rights values, in case when communal cultural relativism prevails, it would be difficult to ensure the protection of the human rights of children and women as the harmful cultural practices would remain intact. These indicate that the adoption of international human rights would not bring changes in the culture and tradition of the society unless appropriate laws and enforcement mechanisms are devised and human rights are accordingly enforced with the participation of the society and other stakeholders. This holds true to Ethiopia. Appropriate normative and institutional frameworks have not been devised and

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<sup>178</sup>G. S. Ogato(2013),The Quest for Gender Equality and Women's Empowerment in Least Developed Countries: Policy and Strategy Implications for Achieving Millennium Development Goals in Ethiopia, International Journal of Sociology and Anthropology, Vol. 5(9), p.360

<sup>179</sup>Hope Lewis (1995), Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide, 8 Harv. Hum. Rts. J.1, p.245

human rights values are not effectively enforced. The society is also opposed to human rights values and rather favors child marriage as one of its basic cultural legacies.

These challenges, whatever form they may take, cannot, however, be excuses to Ethiopian government for its failure to tackle the practice of child marriage. The government has rather the obligation, under international human rights laws, to overcome those challenges and effectively enforce human rights values so as to protect women and children from the harmful cultural practice by bringing about the desired social and cultural transformations among the society.

Taking all the above in to account, it is important for the Ethiopian government to appreciate the gaps in the normative and institutional frameworks and mechanisms as well as the importance of a human rights based approach to address the problem of child marriage in the country.

Evidences show that the theoretical and practical gaps in the existing normative and institutional frameworks that are purported to address the tradition of child marriage have left the practice unabated. The problem in the institutional and normative framework starts from the lack of recognition of the practice of child marriage as a human rights issue. Child marriage is rather left as a mere social evil that would be abolished overtime through social and economic changes. Compared to its prevalence, causes and consequences, viewing child marriage as a social evil is tantamount to self-absolution from obligations under international human rights laws.

Moreover, there is no such a thing as children rights act or any other sort of collection of children rights law in Ethiopia. Even the existing laws that are meant to deal with the rights and protection of children have some gaps. The Ethiopian law allows the conclusion of marriage in accordance with customs and religions. And this law has allowed traditional and customary leaders to pursue the practice of child marriage under the guise of their religions and customs. The laws fail to take this into account. There should have been mechanisms by which religious and customary marriages would be checked whether they are in line with the free consent and age maturity requirements prescribed by international human rights laws.

The absence of recognition of marital rape under Ethiopian law is another problem that needs to be considered. It is a double jeopardy to the victims of child marriage. Consummation of marriage is an obligation between spouses under the Ethiopian law. Because of this, married child girls in Ethiopia have been victims of unprecedented level of early pregnancy, health and life risks including obstetric fistulae. The recognition of marital rape would have helped in alleviating these harmful effects which result from forced sexual intercourse in the name of marriage.

On the other hand, the existing practical gaps in the protection of children from early marriage include the absence of birth and marriage registrations. It is through birth and marriage registrations that legal capacities and consents of parties to conclude marriage can be ascertained. In Ethiopia, however, there are no effective and universal birth and marriage registrations systems. Due to this, attempts to alleviate child marriage have proved futile.

Moreover, the promotion and dissemination of human rights in Ethiopia is limited. The society at large is not aware about the rights of children. Though the government publishes lists of ratified international human rights documents, their content is hardly available to the public in vernacular languages.

It is thus important that, the theoretical and practical gaps in the content and enforcement of human rights laws be addressed. And the laws should also be comprehensive to address child marriage in all of its manifestations and forms. All these measures need to take into account the challenge of deep-rootedness of the practice of child marriage, the high level of illiteracy rate and the socio-economic problems among the Ethiopian society.

Taking all the above into account, a human rights based approach would be essential to deal with the practice of child marriage in Ethiopia from all fronts whether social, economic, cultural and legal. This is because a human rights based approach is broad and follows a problem-to-solution approach. Using a human rights approach to address the practice of child marriage starts from the recognition that child marriage is a human rights issue and universal human rights are values that should supersede abusive local cultures and traditions.

A human rights based approach to child marriage would elevate child marriage from a mere social evil, as currently seen by Ethiopian government, to a serious human rights issue. In doing so, human rights based approach would set clear the rights of the child to be free from the harmful practice and the obligation of the society to refrain from endorsing and pursuing the practice and of the government to ensure protection.

Moreover, human rights based approach stands from the recognition that abject poverty and other socio-economic problems are the causes behind the human rights abuses of children and women. Poverty, lack of economic and educational opportunities are some of the causes of child marriage in Ethiopia. For this, adopting human rights based approach would be important to deal with a wide range of socio-economic issues that have many things to do with the continuation of the practice of child marriage in the country.

A human rights based approach also relies on the incorporation of human rights issues in all socio-economic policies and programs of governments. This would mean that, by following human rights based approach, the government of Ethiopia would have to take into account the issue of child marriage in its laws and policies. That would help streamline the problem of child marriage in all laws and policies and help deal with it from all possible directions.

Last but not least, a human rights based approach, for it is based on the principle of participation, would allow an internal discourse of the practice of child marriage among the society. Through this dialogue, a human rights based approach allows a legitimate criticism of child marriage with in a human rights framework. As a human rights based approach places the rights holder (children's right to be free from early marriage in this regard) at the center of a human rights obligations, it can help evaluate the practice of child marriage against the principle of the best interests of the child. It allows deliberation on existing traditional structures that drive the practice of child marriage. Adopting this internal discourse about the practice of child marriage can set the momentum of change from within the Ethiopian society. Through participation, sensitization education and awareness raising about human rights of children, a human rights based approach also helps change the attitudes and practices of the society from the grassroots levels which would eventually entrench human rights values among itself. Moreover, The engagement of the society in the internal discourse of child marriage and enforcement of human rights laws would, on the one hand, lessen the societal resistance against human rights values, and, on the other hand, it would enable the government to take in to account the cultural sensitivities, views and perceptions of the society with regard to child marriage.

In sum, a human rights based approach is important to address the problem of child marriage in Ethiopia by synchronizing the rights of the child, the tradition of child marriage and the obligations of the society and the government at large. It does help transform the culture and attitude of the society and enhance the human rights protection of children by identifying the responsibility of the stakeholders and dealing with the root causes and rationales behind the practice.

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